



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FWP/170309

PRELIMINARY RECITALS

Pursuant to a petition filed November 23, 2015, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Milwaukee Enrollment Services ["MiLES"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on February 2, 2016. At petitioner's request the record of the February 2nd Hearing was held open until February 4, 2016. With petitioner's agreement a Hearing scheduled for January 5, 2016 was rescheduled.

The issue for determination is whether it was correct to end petitioner's FS effective September 1, 2015.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

BY: [REDACTED], HSPC, Senior
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 39 years old) is a resident of Milwaukee County, Wisconsin.

2. Effective with his April 29, 2015 FS renewal petitioner became subject to the Able-Bodied Adults without Dependents [“ABAWD”] FS work requirements.
3. During the months of June 2015, July 2015, and August 2015 petitioner did not meet the ABAWD FS work requirements because, during each of those months, he did not work or participate in an allowable work program for a combined total of at least 80 hours per month.
4. On July 23, 2015 petitioner sprained his ankle; there is no statement from a health care professional or a social worker verifying that petitioner was not able to work; there is no evidence that petitioner was mentally or physically unable to work.
5. An *About Your Benefits* notice dated August 19, 2015 was sent to petitioner informing him that his FS would end on September 1, 2015 because: “You have used 3 months of time-limited benefits without meeting a work requirement during those 3 months.”

DISCUSSION

Able-Bodied Adults without Dependents [“ABAWD”]¹ must either meet the ABAWD work requirement or an exemption from the work requirement in order to continue to receive FS. Non-exempt ABAWDs who do not meet the work requirement will only be allowed to receive up to 3 full months of Time-Limited Benefits [“TLB”] in a 36-month time period.² *FoodShare Wisconsin Handbook* [“FWH”] 3.17.1.1.; See also, Wis. Stat. § 49.79(10)(a) (2013-14); 7 C.F.R. §§ 273.7 & 273.24 (2015).

An FS member is determined an exempt ABAWD if he or she is an ABAWD who meets at least one of the following criteria, as determined by the Income Maintenance [“IM”] agency:

- Determined unfit for employment, which includes someone who is:
 - Receiving temporary or permanent disability benefits from the government or a private source;
 - Mentally or physically unable to work, as determined by the IM agency;
 - Verified as unable to work by a statement from a health care professional or a social worker.
- Receiving Unemployment Compensation [“UC”] or has applied for UC and is complying with UC work requirements;
- Regularly participating in an Alcohol or Other Drug Abuse [“AODA”] treatment or rehabilitation program;
- A student of higher education who is otherwise eligible for FS;
- A high school student 18 years of age or older, attending high school at least half-time;
- Primary caregiver of a dependent child under age 6 or an incapacitated person;
- Receiving transitional FS benefits; or,
- Meeting the ABAWD work requirement outside of the FS Employment and Training program [“FSET”] through work and/or other allowable work program participation.

FWH 3.17.1.5.

¹ An FS applicant or member is determined a **non**-ABAWD if he or she meets any one of the following criteria, as determined by the Income Maintenance [“IM”] agency: under age 18 or age 50 and older; unable to work; residing in a FS household with a child under age 18; or, pregnant. *FoodShare Wisconsin Handbook* [“FWH”] 3.17.1.4.

² ABAWD eligibility for FS is limited to three (3) months of Time-Limited FS Benefits [“TLB”] in a 36-month period in which the ABAWD is subject to, but is not complying with, the ABAWD work requirement and does not have a qualifying exemption. The three TLB months do not have to be consecutive. FWH 3.17.1.9.

An ABAWD is considered to be meeting the ABAWD work requirement if one of the following applies:

1. Working a minimum of 80 hours per month (use converted work hours if paid weekly or bi-weekly);
2. Participating and complying with an allowable work program at least 80 hours per month (allowable work programs include FSET, Refugee Employment and Training, Wisconsin Works ["W-2"], Children First, Workforce Investment Act ["WIA"] programs, Refugee Cash Assistance programs, and programs under section 236 of the Trade Act);
3. Both working and participating in an allowable work program for a combined total of at least 80 hours per month; or,
4. Participating and complying with the requirements of a workfare program.

FWH 3.17.1.8.

Petitioner did not meet the work requirements for 3 months (June 2015, July 2015, and August 2015) and has used-up all of his 3 full months of TLB. There is no dispute about this. At the February 2nd Hearing petitioner testified that he got hurt and could not work. However, the documentation in the record of this matter shows only that on July 23, 2015 petitioner sprained his ankle -- there is no statement from a health care professional or a social worker verifying that petitioner was not able to work. There is no evidence that petitioner was mentally or physically unable to work. Additionally, petitioner also testified that he never received the notices informing him of the ABAWD work requirement. This is not credible -- especially in light of the fact that he also testified that he could not work, which is not supported by the evidence.

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct to end petitioner's FS effective September 1, 2015.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of February, 2016

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 9, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability